

**THE EFFECTIVE DATE OF THIS ORDINANCE IS JANUARY 8, 2008**

**ORDINANCE NO. 08-02-478**

**Re: Adequate Public Facilities Ordinance – Housing for Older Persons  
– Approval of Restrictive Covenants**

### **BACKGROUND**

On October 18, 2007, the Board of County Commissioners (BOCC) initiated a text amendment to the Adequate Public Facilities Ordinance (APFO) to require approval of restrictive covenants for projects involving “housing for older persons” prior to APFO approval for the project.

On November 28, 2007, the Frederick County Planning Commission held a public hearing and did not make a recommendation to the BOCC concerning this ordinance.

On January 8, 2008, the BOCC held a public hearing on the proposed ordinance, during which the public had an opportunity to provide comments.

### **DISCUSSION**

Section 1-20-7(F) of the APFO provides that any project that qualifies as “housing for older persons” as defined in §1-20-5, and meets the other requirements set out in §1-20-7(F), shall be exempt from the APFO *schools* test. There are a number of requirements to qualify for this exemption, including but not limited to, meeting Fair Housing Act requirements, providing a “full program of amenities for older persons,” and obtaining Planning Commission approval of restrictive covenants for the property, which limit occupancy to “older persons” and exclude school-aged or younger children from residency. Virtually all of the §1-20-7(F) requirements, with the exception of the restrictive covenants, must be met or approved prior to the development’s APFO approval.

This Ordinance amends the APFO to require Planning Commission approval of the restrictive covenants prior to granting APFO approval for the project, whether APFO is approved at subdivision, site plan, or Phase II approval. In addition, the Ordinance relocates some language from subsection 1-20-7(F)(8) to 1-20-7(F)(7). With this change, subsection (F)(7) includes all of

the specific requirements for the restrictive covenants, and subsection (F)(8) provides that the restrictive covenants must be recorded in the County land records prior to recordation of subdivision plats and issuance of building permits or zoning certificates for the project. A minor grammatical change was also made to subsection 1-20-7(F)(11) to clarify the first sentence of that subsection.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND that the following additions and amendments shall be made to §1-20-7(F) of the Frederick County Adequate Public Facilities Ordinance:

(F) Any project which qualifies as "housing for older persons" defined in §1-20-5 hereof, and which meets the following criteria shall be exempt from the schools test under this chapter.

(1) If the proposed project is a PUD or MXD that is not an adaptive reuse project, all or a portion of the project must have been designated as an Age-Rrestricted Community at Phase I in accordance with §1-19-321(E)(7) or 1-19-324(E)(1)(k) of the Zoning Ordinance.

(2) The proposed project must comply with the minimum age restriction, as stated in the Fair Housing Act requirements for older persons, and thereby maintain an exemption from the prohibition against familial status discrimination, such that children will be excluded as residents.

(3) The zoning certificate, site plan and subdivision approvals shall limit usage of the property to ages specified by the Fair Housing Act in order to qualify as housing for older persons, as described in subsection (1) above.

(4) The proposed project shall be located in an area that will be served by both public water and sewer within a designated growth area and shall not be located within an area to be served by well or septic.

(5) The construction and development of the project must include a full program of amenities for older persons. At a minimum, the amenities must include:

(a) A trail system, walking paths, and sidewalks for pedestrian accessibility;

(b) A clubhouse/multi-purpose building(s) or equivalent space sized at 20 square feet for every dwelling unit. A minimum of 1,500 sq. ft. must be provided. The maximum square footage required shall be 20,000 square feet;

(c) Active recreational open space (for the purpose of providing amenities, including but not limited to, a swimming pool, tennis courts, chip and putt course, bocce courts, horseshoe pits, and/or similar active recreational amenities at a rate of 1/3 acre per 100 dwelling units. A New language is shown in CAPS and underlined; deleted language is shown as ~~stricken~~ through.

minimum of 1 acre must be provided. A single large-scale amenity, such as a golf course, may not be proposed as the sole means to satisfy this requirement. Only the physical structure (i.e. footprint) of the clubhouse/multi-purpose building(s), not the parking area(s), will be considered in determining the area of active recreational open space;

(d) Passive recreational space, including but not limited to, picnic areas, gazebos, pocket parks and/or other similar passive recreational amenities; and

(e) An appropriate phasing schedule in each phase of development to meet the needs of the residents.

(6) If, due to unusual circumstances of shape and topography or other physical features or conditions of the development, or because of the nature of adjacent developments, or due to the existence of resources that will be shared with adjacent developments, or if the Age-Restricted Community (ARC) is an adaptive reuse of an existing structure or structures, extraordinary hardship will result from strict compliance with the requirements set forth in subsections (F)(5)(a) through (F)(5)(d) of this section, the Planning Commission may grant a modification of these requirements. The applicant must submit a justification statement with its request for the modification, together with evidence that the development meets the requirements stated above for the requested modification. However, the Planning Commission may not grant a modification that will have the effect of substantially altering or nullifying the intent and purpose of this section. In granting modifications, the Planning Commission may require such conditions as are deemed necessary by the Planning Commission in its sole judgment.

(7) PRIOR TO GRANTING APFO APPROVAL FOR THE PROJECT~~As part of the site plan approval process,~~ the County Planning Commission must review and approve the proposed restrictive covenants applicable to the project to ensure that the project is limited to housing for older persons and EXCLUDES SECONDARY SCHOOL-AGED OR YOUNGER CHILDREN FROM RESIDENCY. THESE COVENANTS MUST REQUIRE that appropriate enforcement mechanisms are in place to enforce the age restriction and also ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act. THE RESTRICTIVE COVENANTS MUST ALSO PROVIDE THAT ANY SUBSEQUENT REVISIONS OR MODIFICATIONS OF THE COVENANTS PERTAINING TO AGE LIMITS FOR OCCUPANCY SHALL BE SUBMITTED TO THE PLANNING COMMISSION FOR APPROVAL PRIOR TO RECORDATION. THESE REVISIONS OR MODIFICATIONS WILL REQUIRE THE RE-APPROVAL OF THE PHASE II PLAN, SITE PLAN, ZONING CERTIFICATE, AND SUBDIVISION PLAT(S), AS NECESSARY.

(8) Prior to recordation of subdivision plats and issuance of BUILDING PERMITS OR the zoning certificate for the project, THE restrictive covenants DESCRIBED ABOVE IN SUBSECTION (F)(7) must be recorded IN THE COUNTY LAND RECORDS~~which comply with the Fair Housing Act, address senior citizen housing and the exclusion of secondary school aged or younger children as residents, and contain appropriate enforcement mechanisms. Any subsequent revisions or modifications of the covenants pertaining to age limits on occupancy shall be submitted to the Planning Commission for approval prior to recordation. Such revisions or modifications will require the re-approval of the site plan, zoning certificate, and subdivision plat(s), as necessary.~~

(9) Before any revision or modification to the project at any time in the future, whether the project is built out and occupied or not, which has the effect of removing or substantially modifying the age restriction for residents, the project must first comply with the schools adequacy requirements under this chapter.

(10) Any project approved under this section shall meet the requirements of the sections of this chapter requiring that roads, public water and sewerage facilities be adequate.

(11) "Appropriate enforcement mechanisms" as used in this section MEANS ~~shall include that the restrictive covenants for the project require the homeowners association, through a property management agent, to enforce the age restrictions and ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children will be excluded as residents. If more than 1 homeowners association is established for the project, then the homeowners association governing the housing for older persons project shall have the primary responsibility for enforcing the age restrictions and ensuring compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children shall be excluded as residents.~~

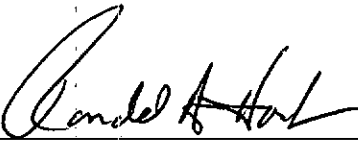
AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall apply to applications requiring APFO approval and seeking the exemption under §1-20-7(F) filed on or after the effective date of this Ordinance. This Ordinance shall also apply retroactively to any application requiring APFO approval and seeking the exemption under §1-20-7(F) filed prior to, but not having APFO approval before, the effective date of this Ordinance.

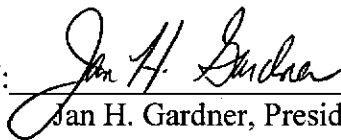
AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on January 8, 2008.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 8<sup>th</sup> day of January, 2008.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF  
FREDERICK COUNTY, MARYLAND

  
Ronald A. Hart, County Manager

BY:  (SEAL)  
Jan H. Gardner, President

KAM  
1/10/08